

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

----- X

Case No. 19-12359 (JLG)

In re

3175-77 VILLA AVENUE HOUSING (Chapter 11)
DEVELOPMENT FUND CORPORATION,

Debtor.

----- X

**MEMORANDUM OF LAW OF THE UNITED STATES TRUSTEE IN SUPPORT
OF MOTION TO CONVERT OR TO DISMISS THIS CHAPTER 11 CASE**

TO THE HONORABLE JAMES L. GARRITY, Jr.,
UNITED STATES BANKRUPTCY JUDGE:

William K. Harrington, the United States Trustee for Region 2 (the “United States Trustee”), does hereby make this motion (the “Motion”) pursuant to 11 U.S.C. § 1112(b) for an order converting or dismissing this Chapter 11 case. In support thereof, the United States Trustee represents and alleges as follows:

Introduction

The Debtor has failed to file a single operating report since it filed its report for August 2022. The Debtor owes no less than fifteen (15) operating reports. Accordingly, cause exists for the Court to convert or dismiss this case. Because there appears to be unencumbered assets in the Debtor’s estate, the United States Trustee recommends conversion to chapter 7 to allow a trustee to administer the estate.

Facts

General Background

1. The Debtor commenced this case by filing a voluntary petition (the “Petition”) on July 23, 2019. ECF No. 1.

2. The Debtor is a co-operative housing corporation. Declaration Pursuant to L.B.R. 1007-2 at ¶ 2, ECF No. 5.

3. The Debtor commenced this case because a judgement of foreclose had been entered on default in an *in-rem* tax proceeding and was recorded against the Debtor’s property. Id. at ¶ 7.

4. The Debtor has continued in possession of its assets.

5. Because of the lack of creditor interest, the United States Trustee has been unable to form a committee of unsecured creditors in this case.

Assets and Liabilities

6. According to the Debtor’s bankruptcy schedules, the Debtor’s primary asset is real property located at 3175- Villa Avenue, Bronx, NY (the “Property”). Bankruptcy Schedule A/B at ECF No. 6. The Property is listed to have a value of \$5,080,000. Id.

7. The Property is encumbered by secured claims in the amounts of (i) \$1,599,336.04 held by the NYC Dept. of Finance, and (ii) \$73,974.92 held by the NYC Water Board. Bankruptcy Schedule D, ECF No. 6.

8. The Debtor also lists in its Bankruptcy Schedules two priority claims in the amounts of \$3,595.64 held by the NYC Water Board and (ii) \$9,000 held by the Workers

Compensation Board. Bankruptcy Schedule E/F, ECF No. 6.

9. The Debtor does not list any general unsecured claims. Id.

Operating Reports

10. As of the date hereof, the Debtor has not filed an operating report since August 2022. See Declaration (the “Declaration”) of Paul Schwartzberg attached hereto. Accordingly, the Debtor currently owes fifteen (15) operating reports. Id.

Argument

Cause Exists to Convert or Dismiss this Case

Section 1112(b) of the Bankruptcy Code describes a variety of factors which may constitute "cause" for the conversion of a Chapter 11 case to a Chapter 7 case or dismissal of a case. See 11 U.S.C. § 1112(b). Under this provision, the court may find cause in the following circumstances, among others:

(F) unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter; and

See 11 U.S.C. § 1112(b)(4)(F).

The circumstances listed in section 1112(b), however, are not exhaustive, and courts are free to consider other factors. In re BH S&B Holdings, LLC, 439 B.R. 342, 346 (Bankr. S.D.N.Y. 2010). The bankruptcy court has wide discretion to determine if cause exists and how to ultimately adjudicate the case. In re The 1031 Tax Group, LLC, 374 B.R. 78, 93 (Bankr. S.D.N.Y. 2007); cf. In re C-TC 9th Ave. P'ship, 113 F.3d 1304, 1311 (2d Cir. 1997) (bankruptcy Court may dismiss Chapter 11 filing on motion or sua sponte upon a finding that the filing was in “bad faith” even without consideration of factors set out in section 1112(b)). Once a party establishes cause, the

burden is on the respondent to demonstrate that dismissal or conversion is not in the best interest of the estate. In re Halal 4 U LLC, 2010 WL 3810860 * 2 (Bankr. S.D.N.Y. 2010).

Section 1112(b) requires a court to convert or dismiss a case if the movant establishes “cause.” 11 U.S.C. § 1112(b)(1). As set forth above, the United States Trustee has demonstrated cause under § 1112(b)(4)(A).

Failure to File Operating Reports

The debtor has failed to file operating reports since August 2022. See Declaration. Accordingly, the Debtor currently owes fifteen (15) operating reports. Id. This failure constitutes cause to convert or dismiss a case. See 11 U.S.C. § 1112(b)(4)(F) (failure to satisfy timely any filing or reporting requirement); see also In re Berryhill, 127 B.R. 427, 433 (Bankr. N.D. Ind. 1991) (failure to file operating reports constitutes cause for dismissal or conversion of Chapter 11 proceeding). Accordingly, cause exists to convert or dismiss this case. Because there appears to be unencumbered assets in the Debtor’s estate, the United States Trustee recommends conversion to chapter 7 to allow a trustee to administer the estate.

WHEREFORE, the United States Trustee respectfully requests that the Court enter an order converting or dismissing this Chapter 11 case, and granting such other and further relief as may be deemed just and proper.

Dated: New York, New York
December 18, 2023

Respectfully submitted,

WILLIAM K. HARRINGTON
UNITED STATES TRUSTEE, REGION 2

By: /s/ Paul K. Schwartzberg
Paul K. Schwartzberg
Trial Attorney
Office of the United States Trustee
Alexander Hamilton Custom House
One Bowling Green, Room 534
New York, NY 10004-1408
Telephone: (212) 510-0500